* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 2102/2005 and CRL.M.A. 5206/2006

Reserved on: March 23, 2007
Decided on: April 18, 2007

SHRI DESH DEEPAK ..... Petitioner
Through Mr. Sidharth Luthra, Sr. Advocate with
Mr. Anurag Ahluwalia, Advocate

versus

STATE AND ANOTHER ..... Respondents
Through Mr. O.P. Saxena, Advocate for the State.
Mr. Ramesh Khatri, Advocate for R-2.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat

1. The present petition seeks the quashing of an order of learned Metropolitan Magistrate, (hereafter "the trial Court") dated 31-08-2004, by which he issued process.

2. The Petitioner alleges that he was Managing Director, of the Himachal Pradesh Minorities Corporation at the relevant time. He and the complainant knew each other; the petitioner used to visit Delhi on regular basis. It is alleged in the complaint that the petitioner came to Delhi from Shimla and allegedly approached the Respondent No.2/complainant (hereafter "the complainant') to seek some advance as the petitioner

was allegedly in need of the cash.

3. It is further alleged that the complainant paid a sum of Rs 1 lakh in cash, to the petitioner/Accused; the latter issued a cheque dated 30-06-2004 in favour of the complainant, drawn on UTI Bank Limited, Shimla, in discharge of his liability. The cheque was allegedly presented on 30-06-04 to his banker Canara Bank, Bhera Enclave, Pashim Vihar at New Delhi. It was dishonoured for insufficiency of funds.

4. The complainant issued a legal notice dated 22-07-04 under Section 138 of the Negotiable Instruments Act, demanding payment of Rs 1,00,000/-; upon non-compliance with the demand, he filed the complaint before the trial court. The trial Court, after recording pre-summoning evidence, issued process. The issuance of summoning order, and process, has been impugned in these proceedings.

5. Mr. Siddharth Luthra, learned counsel urged that the petitioner is an Indian Administrative Service officer of Himachal Pradesh cadre and he never borrowed any money. It was argued that the complainant's wife was attorney of M/s Nishit Jain, Neela Bagh Jain and Neeraj Jain, sons of one Tarsem Lal, resident of 557 , Sec-18 , Chandigarh. As the petitioner was desirous of purchasing that property, he entered into an agreement to do so. He allegedly paid Rs 3,00,000/- as the earnest money and the balance amount was to be paid at the time of the execution of Sale deed. Mr. Luthra submitted that the Petitioner issued a cheque of Rs 19,00,000/- to Vandana Chiller along with the cheque for Rs1, 00,000/-, towards the refundable security to the transaction. The Sale deed was executed on 11-05-04 but the cheques, issued towards refundable security, were not handed over to the petitioner.

6. It is further argued on the behalf of petitioner that on the date of 21-05-04 on which the cheque was dishonored, the balance in the account of the petitioner was Rs 1,09,315.50/- and the cheque was dishonored due to a technical reason as clarified by the drawer's banker, evidenced by a certificate issued for the purpose. It was submitted that the condition reflected on the face of the cheque, was that it was *" payable at par at all branches of UTI Bank in India. Not to exceed Rs50, 000/- for clearing payments at outstation centers"*. The limit for out station payments therefore was Rs.50,000/-. The cheque was payable at par only in Shimla; it was not a cheque for outstation centres of UTI Bank, as it was for the value of Rs.1,00,000/-. The petitioner, it was contended, therefore could not be held liable for return of the cheque, and the impugned summoning order could not have been issued. Counsel relied upon Section 69 of the Negotiable Instruments Act, 1881 as well as the judgment of the Andhra Pradesh High Court in *M/s S.S.V. Prasad -vs- Y. Suresh Kumar* AIR 2005 AP 37 and submitted that a cheque or negotiable instrument is presumed to be one, if it is presented in accordance with the instructions appearing on its face, and that or else, it loses the character of negotiable instrument.

7. The complainant's counsel contended that the petitioner willfully suppressed the fact that as the limit for outstation payment for more than Rs. 50,000/- at par the instrument was payable at outstation branches of UTI Bank. It is further argued that the letter dated 27.10.2005 showed that M/s. Canara Bank, Paschim Vihar, New Delhi sent the cheque to Shimla Branch, OSC 245/04 dated 6.7.04 for clearance in the local clearing in the Shimla. M/s. Canara Bank, Shimla presented the cheque to the drawer's branch, ie

UTI Bank at Shimla; since sufficient funds were unavailable in the account, the instrument was not honoured. It was submitted that all the issues raised are disputed questions of fact, and that if there would be a finding that the cheque was not an instrument, such a conclusion would be premised upon appreciation of a disputed question, and not merely one of law.

8. The cheque in question, a copy of which has been produced, undoubtedly contains the remark "*Payable at par at all branches of UTI Bank in India. Not to exceed Rs. 50,000/- for clearing payments at outstation centers"*. Yet this is not the sole determinative factor; the entirety of complaint has to be seen. The complainant avers that the cheque was returned for insufficiency of funds. The entire basis of the petition however is that the cheque was presented at the wrong place, and returned. This is not borne out by the complaint, the counter affidavit or even the reply to the legal notice (a copy of which is annexure to these proceedings) the reason given by the bank is that the cheque was returned for insufficient funds. Therefore, it would be hazardous for the court to premise its conclusions by accepting the unverified and untested version of the petitioner, at this stage.

9. Sections 68 and 69 of the Negotiable Instruments Act, read as follows:

> "68. PRESENTMENT FOR PAYMENT OF INSTRUMENT PAYABLE AT SPECIFIED PLACE AND NOT ELSEWHERE.
>
> *A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.*

69. INSTRUMENT PAYABLE AT SPECIFIED PLACE.

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at the place. "

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The material part of Section 138, which creates the offence, reads as follows:

138. DISHONOUR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN THE ACCOUNT.

"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence..."

10. According to Section 68, the cheque has to be presented at the place mentioned; Section 138 prescribes that the cheque has to be presented to "the bank", ie. the drawer's bank. The question is whether the facts of this case justify a conclusion that the cheque was not presented at the proper place.

11. The complaint asserts, unequivocally, that the cheque was presented to the drawer's bank. The issue whether presentation of the cheque to the collecting bank in Delhi, and its presentation to the UTI Bank branch in Delhi, and its subsequent return, as alleged in the petition, cannot be decided, at least in proceedings under Section 482, in the absence of documents, such as advice of the Canara Bank, whether the cheque was

indeed refused on the ground of its presentation in the wrong branch, or whether the cheque was returned, and subsequently presented in the correct branch at Shimla. The complaint, however asserts that the cheque was returned for insufficient funds.

12. The factual narrative shows that the cheque was presented in a branch of the UTI Bank outside of Shimla limits; it was apparently returned, to the presenting bank, which then caused it to be presented in the branch at Shimla. According to the complainant, the reason for not honouring the cheque was the account did not have sufficient funds. This is a matter of pleading, and a matter upon which evidence has to be considered. The facts are not admitted; the petitioner asserts that the cheque was not a negotiable instrument, because it was not presented in the proper place, whereas the complainant takes a contrary position. In these circumstances, it would be unwise for the court, without considering all the evidence, to conclude one way or the other; such a finding would be based on insufficient material.

13. The restricted and circumscribed nature of jurisdiction of the court, under Section 482, is well known; the court cannot venture into, and adjudicate upon disputed questions. If the pleadings clearly reveal that no offence is made out, invocation of the power would be justified. In cases like the present, enquiry might well be academic, and in the absence of full evidence, it might even result in unjustified stifling of prosecution.

14. In view of the above reasons, I am of the opinion that no ground for entertaining the petition, and quashing the complaint, has been made out. The petition is, accordingly dismissed, with no order as to costs.

April 18, 2007 (S. RAVINDRA BHAT)

JUDGE